

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

YITZCHOK LEBOVITS and
CHANA SHAPIRO-LEBOVITS, on
their own behalf and on behalf of their
daughters E.L., a minor, and A.L., a
minor; and
BAIS YAAKOV ATERES MIRIAM, a
New York religious corporation,

Plaintiffs,

v.

ANDREW M. CUOMO, individually
and in his official capacity as Governor
of the State of New York;
BILL DE BLASIO, individually and in
his official capacity as Mayor of the
City of New York;
LETITIA JAMES, in her official capac-
ity as Attorney General of the State of
New York;
HOWARD A. ZUCKER, in his official
capacity as Commissioner of the New
York State Department of Health;
CITY OF NEW YORK; and
NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE,

Defendants.

Civil No. 1:20-cv-01284-GLS-DJS
Hon. Gary L. Sharpe

**DECLARATION OF
ERIC C. RASSBACH,
PLAINTIFFS' COUNSEL,
PURSUANT TO LOCAL
RULE 7.1(e)**

I, Eric C. Rassbach, declare:

1. My name is Eric C. Rassbach. I am over the age of 21 and am capable of making this unsworn declaration pursuant to 28 U.S.C. § 1746. I have not been convicted of a felony or crime involving dishonesty, and the facts contained herein are either within my personal knowledge or are based on records kept by my law firm which I believe to be true and correct.

2. I am one of the attorneys representing Plaintiffs in the above-captioned matter. I am submitting this declaration pursuant to Civil Local Rule 7.1(e).
3. Plaintiffs are seeking emergency injunctive relief on an expedited basis. In particular, Plaintiffs seek a reopening of their school as scheduled by Tuesday, October 27, 2020. They are requesting a restraining order against an executive order and implementing directives forcing their religious school to remain closed to in-person learning.
4. Plaintiffs allege serious and ongoing violations of core constitutional rights: namely, the free exercise of religion and the ability of parents to control the educational and religious upbringing of children.
5. Proceeding with this matter as a Notice of Motion per Local Rule 7.1(b)(2) would be inappropriate because that schedule would require several weeks of notice, during which Plaintiffs and the students and families who use their school would be subjected to ongoing and illegal harm by having their school closed and their children separated from their classmates, teachers, and Rabbi.
6. Defendants are already on notice of legal challenges to the orders at issue, including by plaintiffs in *Soos v. Cuomo*, 1:20-cv-00651, ECF No. 76 (N.D.N.Y. Oct. 16, 2020).
7. Additionally, Plaintiffs' counsel has little reason to believe that Defendants would be open to negotiating and working to resolve areas of difference between the parties. As spelled out in both the Complaint, the memorandum in support of the application for an order to show cause, and exhibits thereto, Defendants have not been responsive to the concerns of the Orthodox Jewish community, and at times have admitted to regulating based on "fear" rather than fact, and imposing severe restrictions on Orthodox Jewish neighborhoods despite relatively low levels of COVID. Defendants have also routinely fought

similar challenges ever since imposing mandatory shutdowns related to COVID-19.

8. As such, the Notice of Motion procedures envisioned by Local Rule 7.1(b)(2) will not allow for Plaintiffs' injuries to be addressed in a timely manner.
9. Plaintiffs therefore believe an Order to Show Cause for a Temporary Restraining Order under Local Rule 7.1(e) is necessary under these circumstances.
10. At 9:41p.m. on Friday, October 16, 2020, I informed those believed to be opposing counsel—Adrienne Kerwin, Melanie Sadok, Ellen Parodi, and Hilary M. Meltzer, all of whom have appeared for Defendants in the *Soos* litigation—by email that we would be pursuing this Order to Show Cause under Local Rule 7.1(e). Opposing counsel, including Assistant Attorney General Chris Liberati-Conant, will be served with copies of this declaration. Mr. Liberati-Conant is aware of our intention to seek this Order to Show Cause.
11. I declare under penalty of perjury that the foregoing is true and correct.

Executed: October 19, 2020

Respectfully submitted,

s/ Eric C. Rassbach

Eric C. Rassbach

N.D.N.Y. Bar Number: 302836

Attorney for Plaintiffs

The Becket Fund for Religious Liberty